

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RICHARD CREELY

1610 State Road
Croydon, PA 19021

Plaintiff,

v.

ASSERO SERVICES, LLC.

10 Canal Street
Bristol, PA 19007

Defendant.

:
:
: CIVIL ACTION
:
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: No. _____
:
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: **JURY TRIAL DEMANDED**
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CIVIL ACTION COMPLAINT

Plaintiff, by and through his undersigned counsel, hereby avers as follows:

INTRODUCTION

1. This action has been initiated by Richard Creely (*hereinafter* referred to as “Plaintiff,” unless indicated otherwise) against Assero Services, LLC (*hereinafter* referred to as “Defendant”) for violations of Title VII of the Civil Rights Act of 1964 (“Title VII” - 42 U.S.C. §§ 2000d *et. seq.*), Section 1981 of the Civil Rights Act of 1866 (“Section 1981” - 42 U.S.C. § 1981), the Americans with Disabilities Act (“ADA” - 42 U.S.C. §§ 12101 *et. seq.*, and Fair Labor Standards Act (“FLSA” - 29 U.S.C. §§ 201 *et. seq.*) As a direct consequence of Defendant’s unlawful actions, Plaintiff seeks damages as set forth herein.

JURISDICTION AND VENUE

2. This Court has original subject matter jurisdiction over the instant action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4) because it arises under the laws of the United States and seeks redress for violations of federal laws.

3. This Court may properly maintain personal jurisdiction over Defendant because its contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendant to comply with traditional notions of fair play and substantial justice, satisfying the standard set forth by the United States Supreme Court in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) and its progeny.

4. Pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2), venue is properly laid in this district because Defendant is deemed to reside where they are subjected to personal jurisdiction, rendering Defendant resident of this District.

PARTIES

5. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

6. Plaintiff is a Caucasian male with an address as set forth in the caption.

7. Defendant Assero Services, LLC (“Defendant”) is a foreign (Delaware-incorporated) entity operating a depot location at the above-captioned address within the Commonwealth of Pennsylvania. Defendant engages in residential and commercial repairs, construction, and other labor-related services.

8. At all times relevant herein, Defendant acted by and through its agents, servants, and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for Defendant.

FACTUAL BACKGROUND

9. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

10. Plaintiff is a Caucasian male.

11. Plaintiff was hired by Defendant in or about late September of 2015; and in total, was only employed with Defendant for approximately 1 year.

12. Plaintiff was hired by Defendant's District Manager, one Brian Grissy (spelled phonetically).

13. Plaintiff worked for Defendant in the position of laborer, and his primary duties within pre-set teams entailed: (a) cleaning houses where work was performed; (b) doing landscaping; and (c) other general labor as requested. Most of Plaintiff's work was performed at properties within New Jersey, but he generally performed work all throughout New Jersey and Eastern Pennsylvania (wherever he was transported by Defendant).

14. Another supervisor of Plaintiff was "Ray" (full name unknown), a depot manager, oversaw employees such as Plaintiff within Defendant.

15. Plaintiff was treated in a very discriminatory manner because of his race / national origin and separately because of his health / disabilities.

16. As to Plaintiff's race and/or national origin:

- (A) Defendant employed mostly non-white employees (and in particular many Hispanic employees);
- (B) Ray repeatedly singled out Plaintiff by referring to him as "White Rich," "the lazy white guy," and encouraged Plaintiff's coworkers who were predominantly Hispanic to make fun of him (including but not limited to referring to him as Gringo and other offensive jokes and terms);
- (C) Discrimination went to the very essence of Defendant, as Grissy himself (a high-level manager overseeing operations) stated he was going to find "the spic" who was stealing equipment from Defendant (a derogatory reference to suspecting a Hispanic employee of theft); and
- (D) Plaintiff was the sole white / Caucasian employee on each assigned team wherein he performed labor.

17. As to Plaintiff's health / disabilities:

- (A) Plaintiff has a long history of suffering from a severe anxiety disorder (and other related complications), which causes him at times to visibly shake, stutter and to have other physical manifestations (at times limiting his social interaction, communication, and other mental or physical life activities);
- (B) Notwithstanding Plaintiff's health problems, he was at all times able to perform his job duties well and satisfactorily within Defendant;
- (C) Plaintiff's management, and in particular Ray, (in addition to the aforesaid racial references) repeatedly also referred to Plaintiff as Michael J. Fox (a celebrity who suffers from Parkinson's Disease and also shakes) and made other comments that were offensive from a health discrimination standpoint; and
- (D) Plaintiff repeatedly told Ray he does not have Parkinson's disease but suffers from an anxiety disorder.

18. Plaintiff expressed concerns to Defendant's management about the foregoing discrimination concerns referenced in paragraphs 16 and 17 above. Specifically, Plaintiff asked to stop being called discriminatory names because it was making his anxiety condition worse.

19. In addition to opposing discriminatory treatment, Plaintiff also raised concerns with Defendant's exploitive and unlawful payment practices as follows:

- (A) Plaintiff was often not paid full in his checks, including for his overtime compensation. As a result, Plaintiff repeatedly expressed concerns of unpaid wages including overtime compensation;
- (B) Defendant withheld substantial pay from Plaintiff's first and second payroll checks explaining it is paid to him when he separates. In total, Defendant's withheld in excess of 50 hours of Plaintiff's pay despite his objections; and
- (C) When Plaintiff was terminated from his employment, he was not paid previously withheld earned compensation.

20. Plaintiff was terminated from Defendant on or about October 29, 2016. At the time of his termination, he was told he was being "laid off." Upon information and belief, Plaintiff was terminated for discriminatory, retaliatory and pretextual reasons as Defendant

continued to employ, retain and hire employees to perform the same and/or similar job as Plaintiff.

Count I
Violations of 42 U.S.C. § 1981
(Race Discrimination & Retaliation & Hostile Work Environment)

21. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

22. Plaintiff was subjected to a hostile work environment during his very short period of employment due to his race through disparate and abusive treatment and/or discriminatory treatment towards him.

23. Despite Plaintiff's complaints of race discrimination, Defendant's management failed to properly investigate or resolve Plaintiff's complaints of discrimination.

24. Instead of investigating Plaintiff's aforesaid complaints of race discrimination, Plaintiff was subjected to a termination within close temporal proximity of his aforesaid protective activity.

25. These actions as aforesaid constitute unlawful racial discrimination, retaliation, and a hostile work environment in violation of 42 U.S.C. §1981.

Count II
Violation of Title VII of the Civil Rights Act of 1964 ("Title VII")
(Race Discrimination & Retaliation & Hostile Work Environment)

26. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

27. Plaintiff properly exhausted his administrative remedies before proceeding in this Court for violations of Title VII by timely filing a Charge with the Equal Employment

Opportunity Commission ("EEOC") and by filing the instant Complaint within 90 days of receiving a notice of case closure and/or right-to-sue letter.

28. Plaintiff was subjected to a hostile work environment during his very short period of employment due to his race through disparate and abusive treatment and/or discriminatory treatment towards him.

29. Despite Plaintiff's complaints of race discrimination, Defendant's management failed to properly investigate or resolve Plaintiff's complaints of discrimination.

30. Instead of investigating Plaintiff's aforesaid complaints of race discrimination, Plaintiff was subjected to a termination within close temporal proximity of his aforesaid protective activity.

31. These actions as aforesaid constitute violations of Title VII.

Count III
Violation of the Americans with Disabilities Act ("ADA")
(Race Discrimination & Retaliation & Hostile Work Environment)

32. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

33. Plaintiff properly exhausted his administrative remedies before proceeding in this Court for violations of the ADA by timely filing a Charge with the Equal Employment Opportunity Commission ("EEOC") and by filing the instant Complaint within 90 days of receiving a notice of case closure and/or right-to-sue letter.

34. Plaintiff was subjected to a hostile work environment through abusive treatment and discriminatory comments on account of his known or perceived disabilities. Plaintiff was also terminated because of: (a) his concerns of discriminatory treatment being expressed; and/or (b) due to his actual and/or perceived health problems; and/or (c) in retaliation for him requesting

a very easy accommodation of not making discriminatory comments because it was exacerbating his health problems.

35. These actions as aforesaid constitute violation of the ADA.

Count IV
Violations of the Fair Labor Standards Act ("FLSA")
(Unpaid Overtime and Retaliation)

36. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

37. Plaintiff was not properly paid for all overtime worked, as he had checks shorted and improper withholdings made.

38. Plaintiff expressly complained of overtime nonpayment and was terminated thereafter because of same. Any retaliation against Plaintiff for exercising his statutory rights to complain of unpaid overtime was per se unlawful. *See Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1, 131 S. Ct. 1325, 179 L. Ed. 2d 379 (2011)(it is illegal under the FLSA to retaliate against an employee for verbal or written concerns of unpaid overtime compensation).

39. Defendant's actions as aforesaid constitute violations of the FLSA.

Count V
Violations of the Pennsylvania Wage and Collection Law(s)
(unlawful withholding, docking and non-payment of earned wages)

40. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

41. As explained supra, Plaintiff was not paid all wages owed, earned and worked for during the course and scope of his employment due to unlawful withholding, docking, deductions and improper and incomplete payments per pay period.

42. These actions as aforesaid constitute violations of the PA Wage and Collection Law(s).

WHEREFORE, Plaintiff prays that this Court enter an Order providing that:

A. Defendant is to compensate Plaintiff, reimburse Plaintiff, and make Plaintiff whole for any and all pay and benefits Plaintiff would have received had it not been for Defendant's illegal actions, including but not limited to back pay, front pay, salary, pay increases, bonuses, insurance, benefits, training, promotions, reinstatement, and seniority.

B. Plaintiff is to be awarded liquidated and punitive damages, as permitted by applicable law, in an amount believed by the Court or trier of fact to be appropriate to punish Defendant for its willful, deliberate, malicious and outrageous conduct and to deter Defendant or other employers from engaging in such misconduct in the future;

C. Plaintiff is to be accorded other equitable and legal relief as the Court deems just, proper, and appropriate (including but not limited to damages for emotional distress / pain and suffering);

D. Plaintiff is to be awarded the costs and expenses of this action and reasonable attorney's fees as provided by applicable federal and state law.

Respectfully submitted,

KARPF, KARPf & CERUTTI, P.C.

By: 

Ari R. Karpf, Esq.
3331 Street Road
Two Greenwood Square
Suite 128
Bensalem, PA 19020
(215) 639-0801

Dated: March 13, 2017

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

RICHARD CREELY

CIVIL ACTION

v.

ASSERO SERVICES, LLC.

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

3/13/2017

Date


Attorney-at-law

Plaintiff

Attorney for

(215) 639-0801

Telephone

(215) 639-4970

FAX Number

akarpf@karpf-law.com

E-Mail Address

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 1610 State Road, Croydon, PA 19021

Address of Defendant: 10 Canal Street, Bristol, PA 19007

Place of Accident, Incident or Transaction: Defendants place of business

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: Judge Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☐
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☐
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☐
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☐

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☒ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases

(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Ari R. Karpf, counsel of record do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: 3/13/2017

Attorney-at-Law

ARK2484

Attorney I.D.# 91538

NOTE: A trial de novo will be a trial by jury only if there has been compliance with P.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 3/13/2017

Attorney-at-Law

ARK2484

Attorney I.D.# 91538

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

CREELY, RICHARD

(b) County of Residence of First Listed Plaintiff Bucks
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Karpf, Karpf & Cerutti, P.C., 3331 Street Road, Two Greenwood Square,
Suite 128, Bensalem, PA 19020, (215) 639-0801, akarpf@karpf-law.com

DEFENDANTS

ASSERO SERVICES, LLC.

County of Residence of First Listed Defendant Bucks
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 Title VII (42USC2000), Section 1981 (42USC1981), ADA (42USC12101), FLSA (29USC201)

Brief description of cause:

Violations of Title VII, Section 1981, ADA and the FLSA.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

3/13/2017

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

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